U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

(b)(6)

DATE: FEB 0 1 2013 OFFICE: NEBRASKA SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner seeks classification under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a "research linguist." The most recent information about the petitioner's employment indicates that he is a lecturer in the Department of English and International Tourism at The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits copies of his scholarly writings and a statement from counsel.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –
>
> > (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer –
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The sole basis for the director's decision was the finding that the petitioner has not established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990, published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now U.S. Citizenship and Immigration Services (USCIS)] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

In re New York State Dept. of Transportation (*NYSDOT*), 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, the petitioner must show that the alien seeks employment in an area of substantial intrinsic merit. Next, the petitioner must show that the proposed benefit will be national in scope. Finally, the petitioner must establish that the alien will serve the national interest to a substantially greater degree than would an available United States worker having the same minimum qualifications.

While the national interest waiver hinges on prospective national benefit, the petitioner must establish that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The intention behind the term "prospective" is to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The AAO also notes that the USCIS regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The petitioner filed the Form I-140 petition on November 3, 2011. In an accompanying statement, counsel stated:

> [The petitioner] seeks to be admitted as a Linguistics Researcher and Language Expert. His scholarly work is primarily focused in the area of foreign language research and applied linguistics. Applied linguistics is an interdisciplinary field of study that identifies, investigates, and proposes solutions to language-related real-life problems. Of late, foreign language research has been put in the forefront due to the demands of **economic competitiveness** and **national security**.

> . . . Foreign languages are being thrust into the spotlight through the **need for translators, interpreters, decoders of intelligence in the war on terrorism.** . . .
>
> It is beyond doubt that [the petitioner's] work in the area of foreign language research and applied linguistics will be beneficial to the Unite[d] States, primarily in the area of national security and defense. . . .
>
> The need by the U.S. government for someone who has language expertise such as [the petitioner] is immediate, for it impacts the sensitive area of national security.

(Emphasis in original.) Counsel stated that the government, particularly the intelligence community, has long recognized the "need for language experts like the applicant," and "that this need is hard to fill by relying on U.S. citizens alone." A claimed shortage of qualified workers in a given specialty is not a strong argument in favor of the national interest waiver, because the labor certification process exists in part to confirm and address such shortages. *See NYSDOT*, 22 I&N Dec. 218.

The petitioner submitted two witness letters. Professor [redacted] stated:

> [The petitioner] is an excellent and enthusiastic Research Linguist with extraordinary research ability and outstanding achievements in the English linguistic community. [The petitioner's] educational background and professional interests would be a valuable asset to many industries in their efforts to develop language assessment, language policy, second language acquisition, multilingualism, and so much more.
>
> I am a Professor of Hotel Management at [redacted] and we both attended [redacted] of Foreign Studies majoring in English and have continued to maintain a close, professional relationship to this day.
>
> [The petitioner] has made very significant contributions in an important research area of national interest – a close relationship that foreign language research has sustained with social and political power since the emergence of applied linguistics as a field of scientific inquiry and, more recently, with the demands of economic competitiveness and national security. His expertise in linguistics capture [*sic*] well the conflicting demands currently placed on foreign language researchers and educators: the demand by a global economy for both communicative and intercultural competence, and the demand by the U.S. government for speakers with advanced levels of language proficiency to serve the needs of national security.
>
> [The petitioner's] innovative approach in offering solutions to language-related real life problems will greatly contribute to the national security of the U.S. His research and publications in adversative transitional words, pragmatics, morphosyntactic transfer of language, and contrastive metaphor is in direct response to the demand of an expanding market and of growing international interdependence based on a shared ideal of communicative competence.

> In summary, it is without hesitation [the petitioner] is recognized as an expert in the field and is considered one of the top consultants for applied linguistics. His research in applied linguistics will help our military, strengthen our national security, and is of great value in term [*sic*] of our national interest.

Professor [redacted] stated:

> [The petitioner's] publications identify, investigate, and offer solutions [*sic*] the theoretical and empirical investigation of real world problems in which language is a central issue. His various publications offer insight on how language pedagogy is a significant tool of political power. His meticulous analysis of stress clash, sentential complementation, contrastive metaphors, and accentuations in his work show language as a tool of political change, and enjoins applied linguists to openly discuss the relation of knowledge and power in applied linguistics. There is a demand for language researchers and educators with advanced levels of languages proficiency to serve the country's needs. [The petitioner's] purpose is to foster an understanding of the way people learned and taught foreign languages, in particular English, to solve the real world problems encountered in the economic sphere and on an increasingly multicultural jobmarket [*sic*]. Therefore, applied linguistic research is drawn to study those aspects of second language acquisition that pertained to individuals seeking to use spoken language in real live communicative situations than the capacity of the educated elite to read and interpret literary texts. In other words, [the petitioner's] work allows understanding of each other's intended meanings by comprehending not only the words but the speech acts and notions behind the words. His expertise has drawn media attention in television shows such as [redacted] network show that teaches English.

The two witnesses quoted above identified aspects of the petitioner's research (such as "stress clash" and "contrastive metaphor") but did not describe how that research is particularly significant within the field of linguistics, compared with the research of other qualified linguists. The witnesses provided no documentary evidence to support their claims of fact. For example, the record contains no evidence of "media attention" to the petitioner's work, or documentation from the producers of [redacted] to explain the nature and purpose of the petitioner's claimed appearance(s) on that show, or to confirm that those appearances occurred at all.

The petitioner submitted a letter from [redacted], president of [redacted], offering the petitioner "the position of *Linguist/Researcher* . . . effective January 3, 2012" (emphasis in original). The record does not indicate whether or not the petitioner accepted the offer.

The record indicates that the [redacted] presented the petitioner with a [redacted] in 2006, in recognition of "significant contributions in the growth and development of the association to what it is today." The certificate does not provide any

information about these contributions, except to state that the petitioner was a research associate with the association at the time.

The petitioner submitted copies of his research writings, including excerpts from his doctoral dissertation, abstracts of conference presentations, and papers from journals and books. The submission of these materials establishes their existence, but not their impact, influence or importance.

On February 23, 2012, the director issued a request for evidence, instructing the petitioner to establish that his intended work will produce benefits that are national in scope, and to show his influence on his field. The director acknowledged the job offer letter from [redacted] but noted that the record contained little information about the position. The director requested "any and all documentary evidence regarding any further prospects for employment in the United States."

In response, counsel stated: "Linguists capable of acting as interpreters and translators are valuable in governmental positions especially in the military and the intelligence field, embassies, and companies doing business abroad." The petitioner submitted no evidence that any private or government entity seeks to employ him in such a capacity, or even that the petitioner intends to perform such functions. As such, a list of functions that a linguist might perform has little weight in this proceeding.

[redacted] elaborated on the employment offer submitted earlier, stating:

> [W]e would like to elaborate on the offer of employment that we extended to [the petitioner].
>
> We have extended a job offer to [the petitioner] to join our school as a Linguist/Researcher. Our school offers courses in English as a Second Language to foreign students. . . . [The petitioner] will teach English for academic purposes 21 hrs/week to students who want to learn English.

[redacted]'s first letter was on the letterhead of [redacted]. The second letter showed the same address and telephone number, but identified the prospective employer as [redacted] The benefit arising from such work would appear to be largely limited to the individual students whom the petitioner would teach.

A second job offer letter from [redacted] president of [redacted] reads, in part:

> Our company, [redacted] is in the business of importing and selling fiction, non-fiction, and journalistic works by Korean authors using e-commerce as our selling platform. We have decided to expand the scope of our business to include publishing. We plan to print translations and audiotapes of works originally written in Korean, as well as manuals for educators who want to teach the Korean language.

> It is for this reason that we are extending a job offer to [the petitioner]. As Native Linguist, he will be responsible for all language translations and proofreading of written materials from Korean to English. He will ensure that the translation perfectly complies with instructions and is linguistically perfect. He will integrate new and updated transcriptions into our existing database, and oversee and maintain overall translation quality.

Translations of published works can be disseminated nationally, thereby assuming national scope. Nevertheless, it is highly relevant that, at the time the petitioner filed the petition, counsel asserted that the petitioner's work was nationally important due to its implications for national security. The new job offer from has no demonstrated connection to the original rationale for the waiver application, and there is no evidence that, at the time he filed the petition, the petitioner intended to work as a translator for a publishing company.

An applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the benefit request. 8 C.F.R. § 103.2(b)(1). USCIS cannot properly approve the petition at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1998).

Professor stated:

> I am very familiar with [the petitioner's] work through review of his papers and from presentations at research conferences. [The petitioner] has made many significant contributions in the area of linguistics, and consequently has risen to become one of the foremost linguists in South Korea today. He has presented and published research papers at the highest levels, and more extensively than other Korean linguists with similar qualifications and experience.
>
> . . . His books have made great contribution to the teaching of the English language to Koreans. . . . They are widely used by general linguists and Korean linguists.

The assertion that the petitioner's published work is "widely used" is a claim of fact rather than a matter of expert opinion. Therefore, it is relevant to consider the evidence submitted to support that claim. With respect to the petitioner's published scholarly work, the director had called for evidence that other researchers have cited the petitioner's work. The director instructed the petitioner to submit copies of citing articles or "printouts of search results" from databases that "contain the title, authors, and publication information for both the cited and citing article." The director advised: "Search results that do not contain such details will not be considered evidence."

The petitioner's response included a partial printout from with the heading: "432 Review Title(s) found for [the petitioner]." The one-page

printout identified 19 titles. Each title's entry included the names of the title's author(s), as well as the name of a reviewer. For example, one entry reads as follows:

[redacted]

The petitioner did not explain the significance of this document. The phrase "432 Review Title(s) found for [the petitioner]" does not demonstrate that each of the 432 titles contains a citation to the petitioner's work, and the printout does not identify any specific article(s) by the petitioner.

A printout from the [redacted] database identified seven search results associated with the petitioner's name. Again, the petitioner did not show that these results correspond to citations in academic journals. Some of them might, but the evidence submitted is not sufficient to support that conclusion. At least one search result is clearly not a citation; the quoted portion reads: "If one-time visitors are counted, the number rises to more than 500, said [the petitioner], whose English name is [redacted] one of five club coordinators. The club visits mountains and parks within the capital almost..." (ellipsis in original). Some other entries are formatted in a manner consistent with citation, but the entries are partially in Korean with no certified translation provided as required by the regulation at 8 C.F.R. § 103.2(b)(3). The printout does not contain full information for both the citing and cited articles, as the director required.

A printout from the Yahoo search engine includes five entries highlighted in yellow ink (presumably by the petitioner or counsel). Four of the highlighted entries show the petitioner's name followed by various titles. Once again, the printout does not show that these entries are citations in scholarly journals as opposed to, for instance, listings in tables of contents. Like the other printouts, the Yahoo printout fails to meet the director's specified criteria.

A printout from Google Scholar includes four highlighted entries marked "[CITATION]." Two of the entries show titles of articles by the petitioner, with the petitioner identified as the author. The other two entries show the petitioner's name in parentheses, surrounded by untranslated Korean information. One of the latter two entries shows the same article title as one of the petitioner's own articles. The printout, therefore, appears to identify cited articles by the petitioner, but does not identify where the citations appeared.

Printouts from [redacted] are partly in Korean with no translation provided, and the petitioner did not explain their significance. None of the submitted printouts provided any discernible correlation of citing articles to cited articles.

The petitioner submitted materials about various professional conferences he attended while he was a graduate student. The materials include lists of presentations, but inclusion in such a list is not a citation. Citation acknowledges the influence of an existing source, rather than announces that a presentation is forthcoming in the future.

The director denied the petition on September 18, 2012. The director acknowledged the petitioner's various evidentiary exhibits, but found that the petitioner had failed to establish the significance of

many of them. The director concluded that the petitioner had established the substantial intrinsic merit of his field of endeavor, but not that the benefit from his work would be national in scope or that it would be against the national interest to hold the petitioner to the labor certification requirement.

On appeal, counsel states:

> The Service claims that the applicant failed to meet the "national scope" requirement because the offer of employment is from an ESL [English as a Second Language] school. We disagree. Although at first glance, it appears that the benefit of alien's employment is localized . . . [t]he offer of employment is from a school that enrolls students from different parts of the world. The alien will be more than just a language instructor for the school. He will be conducting research . . . among students of the school on how to make a non-native Korean language speaker attain higher levels of proficiency. Based on the data he would gather from such research, he will propose an experimental methodology that can be used not only by the employer but other ESL schools around the country.

The unsupported assertions of counsel do not constitute evidence. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Counsel's statement, quoted above, contains a number of unsupported statements about the petitioner's intending employer and the petitioner's possible role there. Furthermore, it is highly speculative to assert that the petitioner will develop a widely-used "experimental methodology," when by counsel's own admission the petitioner has not yet even begun the planned research that would eventually yield that methodology.

Counsel states: "The fact that the alien's work is not cited extensively by other language experts does not necessarily mean that his work is not influential." This assertion is true, but then the petitioner must establish his influence through other means. The petitioner cannot meet his burden of proof simply by observing that the evidence, or lack thereof, does not rule out eligibility. Counsel repeats Prof. [redacted] claim that the petitioner's books "are widely-used as references in teaching English among linguists in Korea," but the record provides no first-hand documentary evidence to support that claim.

The Board of Immigration Appeals (BIA) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The BIA also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

The opinions of experts in the field are not without weight and have received consideration above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988). However,

USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as above, evaluate the content of those letters as to whether they support the alien's eligibility. USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, 502 n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). *See also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

Counsel's original justification for the waiver claim rested heavily on national security concerns. Counsel puts considerably less emphasis on national security on appeal, apart from repeating the assertion that "fluent Korean language speakers are in demand in many positions in the Department of State and in military service." Even then, counsel fails to explain how the petitioner's proposed employment at an ESL school, which would not involve teaching the Korean language to non-speakers of Korean, would serve such a goal.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

Review of the record reveals a deficiency in the record which constitutes a second basis for denial of the petition. The AAO may identify additional grounds for denial beyond what the Service Center identified in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

The USCIS regulation at 8 C.F.R. § 204.5(k)(3)(i) states that, to show that the alien is a professional holding an advanced degree, the petition must be accompanied by:

> (A) An official academic record showing that the alien has an United States advanced degree or a foreign equivalent degree; or
>
> (B) An official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty.

On Form ETA-750B, Statement of Qualifications of Alien, the petitioner indicated that he completed "course work" toward a doctorate from [redacted] but there is no evidence that he

received a degree from that institution. A transcript from shows that the petitioner attended first as a "Doctoral Assistant" and then as a "Doctoral Candidate" between 1998 and 2002, but it does not show that the university awarded a degree.

The petitioner did submit transcripts and certificates of graduation from of Foreign Studies in South Korea, indicating that the petitioner earned bachelor's, master's and doctoral degrees from that institution. The petitioner did not, however, submit evaluations to establish that the degrees are equivalent to degrees from a United States university. It may well be that the degrees are equivalent to United States degrees, but the petitioner submitted no evidence to that effect. The absence of this evidence amounts to a second, independent ground for denial of the petition.

The AAO will dismiss the appeal for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.